

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
KM Television of El Dorado, L.L.C.)	
)	CSR-6269-M
v.)	
)	
Charter Communications VI LLC)	
)	
Request for Mandatory Carriage of)	
Television Station KEJB(TV),)	
El Dorado, Arkansas)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: May 7, 2004

Released: May 13, 2004

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. KM Television of El Dorado, L.L.C. ("KM"), licensee of television broadcast station KEJB(TV), Channel 43, El Dorado, Arkansas ("KEJB" or the "Station") filed the above-captioned must carry complaint against Charter Communications VI LLC ("Charter"), for failing to carry the signal of KEJB on its cable systems serving Catahoula, Choudrant, Concordia, Crossett, Ferriday, Jena, Jonesville, Mangham, North Crossett, Oak Ridge, Start, West Crossett and Winnsboro, Louisiana (the "cable communities").¹ Charter filed a Motion to Dismiss to which KEJB replied.

II. BACKGROUND

2. Pursuant to Section 614 of the Communications Act and implementing rules adopted by the Commission in *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues* ("Must Carry Order"), commercial television broadcast stations are entitled to assert mandatory carriage rights on cable systems located within the station's market.² A station's market for this purpose is its "designated market area," or DMA, as defined by Nielsen Media Research.³ A DMA is a geographic market designation that defines each television market exclusive of

¹ Complaint at 1. Initially, KEJB had included the communities of Good Pine, La Salle, Midway, Olla, Ridgecrest, Sicily Island, Tullos and Urania, Louisiana as part of the instant Complaint. In a subsequent "Request for Partial Dismissal of Mandatory Carriage Complaint" ("Request"), KEJB requested that these communities be dismissed. Request at 2.

² 8 FCC Rcd 2965, 2976-2977 (1993).

³ Section 614(h)(1)(C) of the Communications Act, as amended by the Telecommunications Act of 1996, (continued...)

others, based on measured viewing patterns.

3. Pursuant to the Commission's must carry rules, cable operators have the burden of showing that a commercial station that is located in the same television market is not entitled to carriage.⁴ One method of doing so is for a cable operator to establish that a subject television signal, which would otherwise be entitled to carriage, does not provide a good quality signal to a cable system's principal headend.⁵ Should a station fail to provide the required over-the-air signal quality to a cable system's principal headend, it still may obtain carriage rights because under the Commission's rules a television station may provide a cable operator, at the station's expense, with specialized equipment to improve the station's signal to an acceptable quality at a cable system's principal headend.⁶

III. DISCUSSION

4. In support of its complaint, KEJB states that it is a full-power television station currently operating under program test authority and licensed to El Dorado, Arkansas, which is in the Monroe, Louisiana – El Dorado, Arkansas DMA.⁷ Specifically, KEJB states that it completed construction and began operating under program test authority on Saturday, October 11, 2003.⁸ KEJB states further that Charter operates several cable television systems that are also in the Monroe, Louisiana – El Dorado, Arkansas DMA.⁹ KEJB asserts that on October 2, 2003, pursuant to Section 76.64(f)(4), it formally requested mandatory carriage of its signal on Charter's cable system serving the cable communities.¹⁰ KEJB asserts that Charter did not respond in writing to its October 2, 2003 letter, within 30 days as required by Section 76.61(a)(5)(i) of the Commission's rules and that, as a result, it filed the instant complaint within 60 days after Charter's failure to respond.¹¹ KEJB asserts that it is committed to deliver, at its own expense, a good quality signal to Charter's principal headends.¹²

5. In opposition, Charter maintains that KEJB did not comply with the Commission's two-step notification process when it failed to notify Charter of its alleged failure to meet its carriage obligations as Section 76.61(a) of the Commission's rules requires.¹³ Charter asserts that KEJB's October 2, 2003 letter could have not served as a Section 76.61(a) notification because by KEJB's own

(...continued from previous page)

provides that a station's market shall be determined by the Commission by regulation or order using, where available, commercial publications which delineate television markets base on viewing patterns. *See* 47 U.S.C. § 534(h)(1)(c). Section 76.55(e) requires that a commercial broadcast television station's market be defined by Nielsen Media Research's DMAs. 47 C.F.R. § 76.55(e).

⁴ *See Must Carry Order*, 8 FCC Rcd at 2990.

⁵ 47 C.F.R. § 76.55(c)(3).

⁶ *Must Carry Order*, 8 FCC Rcd at 2991.

⁷ Complaint at 1.

⁸ *Id.* at n. 2.

⁹ *Id.* at 2.

¹⁰ *Id.* and Exhibit 1; *see also* § 76.64(f)(4).

¹¹ Complaint at 4; *see* 47 C.F.R. § 76.61(a)(5)(i).

¹² Complaint at 4; *see* 47 C.F.R. § 76.55(c)(2)-(3).

¹³ Opposition at 2.

admission, it did not begin operating until after October 2, 2003.¹⁴ Charter contends that because KEJB's complaint is premature, it should be dismissed.¹⁵ In support, Charter cites *Rancho Palos Verdes Broadcasters, Inc. v. News-Press & Gazette Co.*, where the Commission dismissed a must carry complaint holding that "resolution of the [station's] must carry rights in an uncontested proceeding is not appropriate without an actual demand for carriage."¹⁶ Finally, Charter states that, based on preliminary tests, it has serious doubts that KEJB can provide a good quality signal to all the principal headends at issue.¹⁷

6. In its Reply, KEJB reiterates that its October 2, 2003 correspondence was both an election letter and a demand for mandatory carriage and maintains that it was not required to specifically cite Section 76.61(a)(1) of the Commission's rules in its October 2, 2003 letter to Charter.¹⁸ KEJB argues that its complaint should not be dismissed even if the Commission finds that the October 2, 2003 letter was only an election letter because Charter has, albeit informally, expressed an opposition to the instant complaint when it stated in a footnote that it did not believe KEJB could deliver a good quality signal to the Charter headends in question.¹⁹ In support, KEJB cites *Rancho Palos Verdes, Inc. v. K.E.D.G. Rand District Cable*, where the Commission found that an "informal opposition to carriage" from the cable operator was sufficient for consideration of a must carry complaint.²⁰ KEJB also reiterates that it is committed to deliver, at its own expense, a good quality signal to Charter's principal headends.²¹

7. At the outset, we note that the Commission's must carry requirements set forth a two-part notification process with which stations are required to comply: the retransmission consent/must carry election notification required by Section 76.64(f) of the Commission's rules and the demand for carriage by qualified stations set out in Section 76.61(a) of the Commission's rules.²² In that regard, we disagree with KEJB's assertion that its October 2, 2003 letter was a demand for mandatory carriage. The text of the letter clearly indicates that it was must carry election letter only, not a demand for carriage as required by Section 76.61(a) of the Commission's rules. KEJB's October 2, 2003 letter did not trigger the statutory 60-day complaint cycle envisioned in Section 76.61(a) of the Commission's rules.

8. KEJB's reliance on *Rancho Palos Verdes Broadcasters, Inc. v. K.E.D.G. Rand District Cable* is misplaced. The Commission has accepted election letters as informal demands for carriage in circumstances where the parties have fully pled their positions. In the instant case, however, the facts are different. In this instance, Charter has not pled with specificity its possible defenses in this matter nor was it compelled to do so under the Commission's rules without KEJB making a formal demand for carriage. Consequently, we dismiss the instant complaint.

¹⁴ *Id.*; see Complaint at n. 2.

¹⁵ Opposition at 3.

¹⁶ *Id.* at 3-4; see 18 FCC Rcd 9968 (2003).

¹⁷ Opposition at n. 10.

¹⁸ Reply at 2, citing *TCA Cable Partners*, DA 03-4080 at ¶ 10 (MB, rel. Dec. 23, 2003).

¹⁹ Reply at 2.

²⁰ 18 FCC Rcd 7065 at 7066 (2003).

²¹ Reply at 4.

²² 47 C.F.R. §§ 76.64(f) and 76.61(a).

IV. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED**, pursuant to Section 614 of the Communications Act of 1934, as amended, 47 U.S.C. § 534, that the must carry complaint filed by KM Television of El Dorado, L.L.C., licensee of television broadcast station KEJB(TV), El Dorado, Arkansas, against Charter Communications VI LLC **IS DISMISSED**.

10. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²³

FEDERAL COMMUNICATIONS COMMISSION

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²³ 47 C.F.R. § 0.283.